

Village of Irvington  
Zoning Board of Appeals

Minutes of Meeting held March 28, 2000

A meeting of the Zoning Board of Appeals of the Village of Irvington was held at 8:00 P.M., Tuesday, March 28, 2000, in the Trustees' Meeting Room, Town Hall, Irvington, N.Y.

The following members of the Board were present:

Louis C. Lustenberger, Chairman  
Robert Bronnes  
Bruce E. Clark  
George Rowe, Jr.

Mr. Lustenberger acted as Chairman and Mr. Rowe as Secretary of the meeting.

There were two matters on the agenda, both continuations:

- 2000-01 Bridge Street Properties, LLC - 1 Bridge Street, Irvington, NY (Sheet 3, Lot P102)
- 2000-02 Frank Martucci & Robert A. & Katherine Mackie - 33 Matthiessen Park, Irvington, NY (Sheet 2, Lots P109/P12)

## Bridge Street Properties

The applicant here, the Solera-on-Hudson Restaurant, seeks a variance from the provisions of Section 243-43(A) of the Code, to permit the posting of a sign on the north side of its restaurant.

Applicant was represented at the hearing by Messrs. Frank F. Villano, Messrs. Rufino Lopez and Ronald Fodrowski, principal owners of the restaurant, and by Brian Gallagher of the Parker Chapin firm. The relevant provisions of the Code prohibit the display of signs that intrude into Main Street, Main Street here being a continuation of the Village Main Street on the western side of the railroad tracks, between Bridge Street and the river.

The applicant explained that a sign on the eastern (Bridge Street) side of the building denotes the restaurant and is visible to prospective customers as they proceed down Main Street, but, absent a sign on the northern side of the building, customers might be confused as to the location of the restaurant as they come down the

Bridge Street ramp on the western side of the tracks. The applicants presented photographs of the building and sketches of the proposed lettering, which would appear on two of three awnings on the northern side of the building.

The Board noted the modest nature of the sign, the obvious need for such a sign by the restaurant, and the lack of any detriment to the neighborhood. Only the words "SOLERA RESTAURANT" and the words "TAPAS BAR" will appear on the two easternmost of the three awnings. The majority of the board believed that the signs were reasonable. Mr. Clark thought the lettering on the first of the three awnings was sufficient. On motion duly made and seconded, the variance was granted, three voting for the variance and Mr. Clark voting against it.

Frank Martucci & Robert A. & Katherine Mackie

Mr. Clark recused himself on this matter.

This matter was first heard at the last meeting of the Board on February 29. At that meeting, the application was comprised of an application for an interpretation of Sections 243-10 and 274-19(G) to

determine whether the proposed subdivision of a two acre lot located north of Bridge Street provides access via an easement or lacks frontage under those two sections of the Code. The Building Inspector had denied subdivision permits for lack of frontage.

At or prior to the instant meeting, the Board was presented with additional materials:

(1.) A letter from Mr. Gardella, representing the Cohens, noting that the applicants have now expanded their request for relief to a request for an "exception" pursuant to Section 7-736 of the Village law and objecting to the relief sought by applicants; and

(2.) A letter from Rice & Amman, March 28, 2000, representing Harry Jacobs, also objecting to the relief sought by applicants.

(3.) Applicants submitted a letter from Mr. Robert Bauer, Superintendent of Public Works, and a letter from Mr. John Peters, Fire Chief, indicating that they had no objection to the proposed subdivision, provided certain changes to the easement were effected.

Mr. Scheer, representing Mr. Martucci and the Mackies, repeating the arguments to the attachment to the application, noted that they had purchased the property in 1986 from Horace McAfee, with an easement over the McAfee (now Cohen) property to the 2 acre lot, and that an application to subdivide the 2 acre lot had been filed in 1999.

Mr. Scheer argued that the easement satisfies the frontage requirements of the Code, that the Code contains no definition of a street, that there is nothing in the Code saying that only frontage on a public street will suffice and that there is precedent indicating that frontage can be satisfied by an easement, a right-of-way or a private street.

Mr. Scheer called attention to the DeLoe case, 49 A.D.2d 572, in which the Appellate Division held that a variance or an exception might well lie permitting a development, even though the property does not front on a public street, if proper access otherwise exists.

Mr. Scheer added that if the Board did not see fit to grant a variance then applicants request an exception under Section 7-736 of the Village Law.

Mr. Gardella, representing the Cohens, submitted letters dated November 24, 1999 and February 29, 2000, argued in substance that the easement granted by the Cohen's predecessor, Mr. McAfee, in 1986 looked only to the construction of a single residence on a 2 acre lot and not to the subdivision of the 2 acre lot and the construction of 2 residences. He also noted that the variance previously granted which allowed access to the 2-acre lot via that easement had expired, since no action had been taken on it for over a year after it was granted.

He argued that Section 7-736 of the Village Law does not contemplate a grant of a variance in this case.

Mr. Rice, representing Mr. Jacobs, joined in Mr. Gardella's argument, pointing out that an easement does not satisfy the requirements of the Village Law Section 7-736, that the easement granted in 1998 has expired, that the applicants must satisfy the requirements of an area

variance, including the access provisions of Section 249-10 and Section 207-19B of the Code, which they have not done.

Mr. Scheer rejoined that the easement granted in 1986 was not limited to one lot. He also argued that there is no subtraction of the area of a lot occasioned by a driveway, as his opponents had argued, which would have rendered the two lots less than one acre in size.

The Chairman said the members needed more time to consider the submissions and that the matter would be continued to the April 25 meeting, and advised applicants that they should consider modifying their application to include a request for an area variance, pointing to the Kern case, 185 A.D.2d 346.

There being no further business to come before the meeting, it was, upon motion duly made and seconded, unanimously adjourned.



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George Rowe, Jr.'